

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Postal Rate and Fee Changes, 1997)

Docket No. R97-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL RESPONSE TO INTERROGATORIES
OCA/USPS-T32-57b AND OCA/USPS-8,
MOTION FOR EXPEDITED RULING AS TO OCA/USPS-8,
AND MOTION FOR LATE ACCEPTANCE
September 18, 1997

The Office of the Consumer Advocate ("OCA") files this Motion to Compel in response to the United States Postal Service Objections to Interrogatory OCA/USPS-T32-57b, filed September 12, 1997, and to Interrogatory OCA/USPS-8, filed July 28, 1997. OCA seeks an expedited ruling with regard to OCA/USPS-8. OCA also moves that the Commission accept the late-filed motion concerning OCA/USPS-8.

The Postal Service's objections and our responses thereto pose issues substantially similar to those recently disposed of in Presiding Officer's Ruling No. R97-1/20 ("POR 1/20"), issued September 17, 1997. In brief, the issues pertain to the lack of sponsorship of Postal Service library references and the evidentiary status of such library references.

OCA/USPS-T32-57b

OCA/USPS-T32-57 sought the following information:

OCA/USPS-T32-57. Please refer to LR H-226, "Qualitative Market Research - Prepaid Reply Mail Product Concept In-Depth Interviews with Businesses - Final Report," ("report") dated May 2, 1997.

- a. Confirm that Price Waterhouse authored the report. If not confirmed, please explain.
- b. Does the Postal Service plan to introduce the report as part of its testimony in this docket? If not, why not? If so, who will sponsor it?
- c. Please supply all documents not already provided as part of LR H-226 relating to giving instructions or guidance for preparation of the report, including, but not limited to, instructions or guidance to the author for preparing the study methodology, for conducting the study, and for writing the report's conclusions.

LR H-226 is probative of issues in this case related to the Postal Service's Prepaid Reply Mail and Qualified Business Reply Mail proposals. LR H-226 was filed in response to Presiding Officer's Information Request No. 1.

As already noted by the Presiding Officer in POR 1/20, the Postal Service has taken the position with regard to OCA/USPS-T32-57b that "[t]he interrogatory is one which relates to litigation strategy, as opposed to the substantive issues in this proceeding."¹ The Postal Service's objection to OCA/USPS-T32-57b recognized that the procedural issues involving POR 1/20 and OCA/USPS-T32-57b were the same:

¹ POR 1/20, n.9 at 6.

"Any response to OCA/USPS-T32-57b by witness Fronk would be affected by the Commission's ruling in response to that motion."²

OCA thus moves that the Postal Service be compelled to respond to OCA/USPS-T32-57b, under the same reasoning used by the Presiding Office in POR 1/20.

OCA/USPS-8

OCA/USPS-8 sought the following information:

OCA/USPS-8. Please refer to the following Postal Service library references:

H-2 - H-6	H-8	H-11
H-13 - H-24	H-27 - H-37	H-39 - H-47
H-50 - H-53	H-63 - H-70	H-84
H-87 - H-88	H-90 - H-103	H-123
H-127	H-129	H-145
H-177 - H-178	H-186	H-192 - H-193
H-196		

- a. For each of the above library references, please confirm that the library reference is not referred to in the testimony of any Postal Service witness in this docket. If you do not confirm, please provide a cross walk between each library reference and each portion of testimony that refers to the library reference.
- b. For each of above library references, please identify the witness sponsoring the library reference.
- c. For each of the above library references, please identify the witnesses that rely on the library reference.

² Objections of the United States Postal Service to OCA Interrogatories to Witness Fronk (OCA/USPS-T32-57b et al.), filed September 12, 1997, n.1 at 1.

- d. For each of the above library references, please identify the witnesses who contributed to the creation of the library reference. If a witness did not create the entire library reference, please identify the portions of the library reference created by the witness.
- e. For each of the above library references that was created in any part by contractors or consultants, please provide:
 - i. The statement of work under which the work was performed for the Postal Service.
 - ii. The name of the person(s) or firm that performed the work.
 - iii. Identification of the portions of the library reference prepared by the contractor or consultant.
- f. For each of the above library references that was created at least in part by Postal Service employees (no sponsoring witness), please provide:
 - i. The name of the department or office that produced the work.
 - ii. All written instructions or communications detailing the work to be performed.
 - iii. Identification of the portions of the library reference prepared by the Postal Service employees.

The Postal Service had several objections to answering the interrogatory. First, it argued that the interrogatory is not reasonably calculated to lead to the production of admissible evidence.³ The Postal Service opined that the OCA appeared to seek a detailed roadmap of many of the library references, but that "such a roadmap is unlikely to have any value as evidence in this proceeding."⁴ OCA believes, however, that the

³ Objection of United States Postal Service to OCA/USPS-8 ("Objection"), filed July 28, 1997, at 1.

⁴ Id.

roadmap is necessary as a means to ensure that it can evaluate the evidence contained in those references. As may be inferred from the interrogatory itself, OCA laboriously tried to construct its own "roadmap" through all the library references, in an effort to determine, inter alia, which library references were being referred to by Postal Service witnesses. That left the list of library references referred to in OCA/USPS-8, which appeared not to have been referred to by Postal Service witnesses. OCA/USPS-8 was filed as a means of determining how those library references fit into the Postal Service's overall Request, based on the assumption that the Postal Service intended them to have some probative value.

A roadmap is especially important in this case because of the complexity of the Postal Service's case, a complexity made all the more vexing because of the fragmentary nature in which the Postal Service has presented its case. Individual witnesses testify only on small segments of a proposal, or on a specific issue (e.g., a particular kind of costing methodology) applicable to numerous proposals. In order to evaluate an individual proposal, one must often examine numerous library references, and at least several other witnesses' statements. In turn, each of those referred-to witness statements contains a new set of library references, as well as references to yet other witnesses' statements.

Next, the Postal Service states that the interrogatory is objectionable due to its questionable relevance to the issues in this case, and because it is overbroad. The

Postal Service states:⁵

In many cases, Postal Service library references are produced solely as background information, or strictly in order to comply with documentation requirements imposed by the Commission's rules. As such, they need not be an integral part of the Postal Service's filing, no witness need sponsor or rely upon them, and the identity of their preparers, the extent of preparer contribution, and the other wide-ranging characteristics sought by the OCA have little demonstrable bearing on the issues in this case.

This is a puzzling rationale for an objection. It seems to say both that (1) background information is not important; and (2) that the Commission's documentation requirements are not important. We disagree with the Postal Service rationale. Perhaps for these library references that are deemed not important, the Postal Service should designate them as such upon filing, e.g., "Don't bother reading this one."

As a test of the Postal Service's "useless background" and "useless Commission-required documentation" assertions, we randomly gathered six library references for which information was sought in OCA/USPS-8: H-2, H-6, H-8, H-192, H-193 and H-196. H-2, "Cost and Revenue Analysis FY1996," presents, inter alia, a summary of revenues and costs for major service categories. H-6, "Base Year/Roll-Forward In Machine Readable Form," is self-explanatory. H-8, "Roll Forward Test Year Volume Variable Cost Footnotes," "contains reference citations for 'Rollforward Volume Variable Costs (Excluding PESSA)' development." H-192, "Rural Carrier Average Allowances Per Route," contains the documentation for the calculation of the average

⁵ Id. at 1-2.

allowances on rural routes.⁶ H-193, "Rural Letters/Flats Adjustment," "contains the documentation for the calculation of the percentage of Rural Carrier Cost System letters that will be moved into flats when generating rural cost distribution keys for these mail types."⁷ H-196, "Rule 54(a)(1) Alternate Commission Cost Presentation (Base Year)," is self-explanatory.

Perhaps when the Postal Service replies to this pleading it may provide elucidation on which of these library references it considers "useless background" and "useless Commission-required documentation."⁸

The Postal Service specifically objects to filing the information sought with regard to H-196, which was prepared pursuant to its Rule 54 obligations. Obtaining the information sought would not, as the Postal Service argues, require it to adopt a litigating position against its will. We are not asking the Postal Service to defend the Commission's methodology requirements. Nor are we asking the Postal Service to embrace H-196. We are asking who will be able to answer questions as to whether it has done its job correctly.

⁶ "Rural carrier pay is based on time allowances given for delivering and collecting mail and other factors, such as the number of boxes on the route and the mileage on the route. These allowances are determined during an annual mail count. This program calculates the average weekly values for the variables used to determine the time allowances" H-192, at 3.

⁷ H-193, at 1.

⁸ In the Postal Service's Compliance Statement, filed as Attachment G to its Request in this docket, it expressly refers to H-2, H-3, H-186, H-196. H-2, H-186, and H-196 are three of the library references for which we requested additional information. Perhaps it is these three which the Postal Service would characterize as providing merely useless documentation.

Finally, the Postal Service urges OCA to thoroughly review the Postal Service's documentation "prior to requesting more of the same in a different but largely redundant format."⁹ We have reviewed the Postal Service's documentation, and, as stated, simply can find no connecting witnesses to the library references at issue.

MOTION FOR EXPEDITED RULING

OCA respectfully requests an expedited ruling with regard to the OCA/USPS-8 Motion to Compel.¹⁰ First, a road map is truly needed, and the sooner the better, as the discovery period winds down. Other parties may also be confused by the lack of a roadmap as to who will sponsor these "ghost ship" library references. Second, an expeditious ruling will enable participants better to address the issues raised by Notice of Inquiry No.1 on Interpretation of Commission Rules Authorizing the Use of Library References ("NOI No. 1"), issued September 17, 1997. Once participants know where the "ghost ship" library references fit into the Postal Service's case, they can better address such issues as whether withholding such information appears to be part of the Postal Service litigation strategy, and whether these library references can reasonably be characterized as such.¹¹ Indeed, without an expedited ruling on OCA/USPS-8, we

⁹ Objection at 2.

¹⁰ Postal Service counsel has been notified of this request by telephone and has been faxed a copy of this pleading.

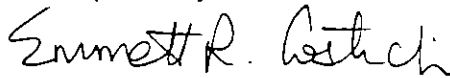
¹¹ We would note that for at least several of the library references we selected out for discussion herein, their slenderness disqualifies them from becoming library references by reason of *avoids*. See POR 1/20, n. 8 at 6, commenting on the questionableness of H-112's library reference designation.

cannot answer a fundamental question posed by NOI No. 1: "to what specific proposal does it relate?"¹²

MOTION FOR LATE ACCEPTANCE

OCA respectfully requests that its late-filed motion as to OCA/USPS-8 be accepted for filing. A ruling on this request will enable OCA (and likely other participants) to respond more informatively to NOI No. 1. Further, the Postal Service should not be prejudiced by the late filing, since it does not affect the progress of its own discovery of other participants' evidence. Finally, while ideally a Motion to Compel should have been filed some time ago, POR 1/20 and NOI No. 1, and the pleadings that led to those rulings, have sharpened our awareness of the consequences of the Postal Service's library reference practices.

Respectfully submitted,

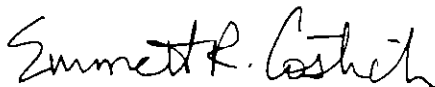


EMMETT R. COSTICH
Attorney

¹² NOI No. 1, at 2.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

A handwritten signature in black ink, reading "Emmett R. Costich". The signature is written in a cursive style with a large, stylized "E" and "C".

EMMETT R. COSTICH
Attorney

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